MICHAEL R. WARE

IBLA 84-170 Decided July 31, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring a mining claim abandoned and void for failure to file annual proof of assessment work or a notice of intent to hold the claim. ORMC 38849.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

   Failure to file an instrument required by 43 U.S.C. § 1744 (1982) within the prescribed time constitutes abandonment of the mining claim.

2. Notice: Generally

   All persons dealing with the government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Mining Claims: Generally -- Mining Claims: Location

   There is no limit to the number of claims a person may locate.

APPEARANCES: Michael R. Ware, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Michael R. Ware has appealed from a letter decision of the Oregon State Office, Bureau of Land Management (BLM), dated September 13, 1983, declaring the Weesau mining claim, ORMC 38849, abandoned and void for failure to file either evidence of assessment work or a notice of intention to hold the claim before December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2. Additionally, BLM rejected appellant's 1982 proof of labor as ineffective to reinstate the abandoned claim.

By letter dated November 18, 1983, appellant responded to BLM's letter, 1/ requesting an appeal and reinstatement of his claim. On May 8, 1984, this Board suspended consideration of mining claim recordation cases, including this case, pending determination of the appeal of the decision in Locke v. United States, 573 F. Supp. 472 (D. Nev. 1982). On April 1, 1985, the Supreme Court issued its decision, United States v. Locke, 105 S. Ct. 1785 (1985), in which the Court found section 314 of FLPMA to be constitutional, within the affirmative powers of Congress, and not violative of the due process of mining claimants. Consideration of this appeal may now proceed.

[1] Appellant does not argue that proof of labor for 1981 was ever filed with BLM. Instead, he presents five points to "explain the confusion." Although each is addressed below, they do not affect the outcome. Section 314 of FLPMA requires the owner of an unpatented mining claim located on public land to file with the proper BLM office before December 31 of each year an affidavit of assessment work or notice of intention to hold the claim. The statute also provides that failure to file shall be conclusively deemed to constitute an abandonment of the mining claim. As no filing was made within calendar year 1981, BLM properly declared the claim to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the filing requirements of FLPMA rests with the owner of an unpatented mining claim. This Board has no authority to excuse lack of compliance, extend the time for compliance, or afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] Appellant first states that "updated material on the Recordation of Unpatented Mining Claims was not available." While it is not clear what "material" appellant refers to, it does not matter; the obligation to annually file with BLM is imposed by statute and regulation. All persons dealing with the government are presumed to have knowledge of relevant statutes and duly promulgated regulations. Hughes Minerals, Inc., 74 IBLA 217 (1983).

Appellant next points to the "possibility" that the claim was on patented land. BLM concluded that the Weesau had been, in part, located on patented land. However, to the extent that the claim was located on public land, the filing requirements imposed by section 314(a) of FLPMA apply. If, on the other hand, the mining claim was totally located on land patented without a mineral reservation, appellant's claim would be null and void ab initio for that reason. Jonathan Carr, 49 IBLA 17 (1980).

[3] Appellant's third reason for not filing a notice of assessment work is "the possibility that one person could not claim multiple claims" so

1/ BLM's letter was sent by certified mail to appellant, but delivery was not completed. After being returned by the post office, it was again mailed and received by appellant on Nov. 10, 1983. Thus, the appeal was timely filed.

that responsibility for filing was left to the Weesau's co-locator. In this, appellant is mistaken as to the law. There is no limit to the number of claims a person may locate. See American Law of Mining, § 31.01 (2d ed. 1984).

Fourth, appellant states that as part of a group of contiguous claims assessment work "could be taken on a related claim as the improvements have helped to develop said claim." While group assessment work is permitted under the law, see generally American Law of Mining, § 45.04[7][b] (2d ed. 1984), the fact that work is done for claims as a group does not change the obligation of the locator to annually file proof of assessment work performed for the benefit of each claim.

Finally, appellant claims that the date of location of the claim was in 1981. In this appellant is mistaken. The copy of the notice of location appearing in the record shows that the Weesau was located on September 19, 1980, locally recorded in Jackson County, Oregon, the same day, and filed with the BLM on December 8, 1980. Thus, under section 314, a filing for 1981 was required.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Will A. Irwin
Administrative Judge